same.[16] Thus it may be seen that the purchaser of a certificate of stock is protected against the rights of a previous holder practically only where such previous holder has enabled persons to sell the stock, and consequently is estopped from claiming he did not intend so to do. [17]

S. L. M.

INTERSTATE COMMERCE—FINALITY OF REGULATIONS IN TARIFF SCHEDULES—LIMITATION OF LIABILITY—BAGGAGE—The question as to whether a common carrier, in interstate traffic, can limit its liability to an agreed valuation, has again been passed upon favorably in a recent decision,[1] where, however, the question was as to baggage, instead of merchandise, as in the now leading case of *Adams Express Co.* v. *Croninger*.[2] An action was brought on a contract of carriage in interstate commerce to recover from the railroad company for the loss of certain baggage belonging to the plaintiff, which had been transported by the defendant in interstate commerce. From the findings of fact it appeared that the baggage was checked on a first class ticket purchased by the plaintiff; that at the time the baggage was checked the plaintiff had no notice of the regulations hereinafter referred to limiting the liability of the defendant (further than such notice is to be presumed from the schedules filed and posted); that no inquiry was made by the defendant on receiving the plaintiff's baggage as to its value; that any reasonable person would infer from the outward appearance of the plaintiff's baggage that the value largely exceeded one hundred dollars; that the true value of the baggage was one thousand nine hundred four dollars and fifty cents, and that the loss of the baggage was due to the negligence of the defendant. It was also found that the tariff schedules filed by the defendant with the Interstate Commerce Commission, in accordance with the Interstate Commerce Act, and properly posted according to law, contained provisions limiting the free transportation of baggage to a certain weight and the liability of the defendant to one hundred dollars followed by a table of charges for excess weight and also contained the following provision:

> "For excess value the rate will be one-half of the current excess baggage rate per one hundred pounds for each one hundred pounds, or fraction thereof, of increased value declared. The minimum charge for excess value will be fifteen cents.

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[16] Shaw v. Spencer, 100 Mass. 382 (1868); Gerard v. McCormick, 130 N. Y. 261 (1891); Clemens v. Heckscher, 185 Pa. 476 (1898).

[17] McNeil v. Bank, *supra;* Wood's Appeal, 92 Pa. 379 (1880); Otis v. Gardner, 105 Ill. 436 (1883); Natl. Safe Deposit, *etc.*, Co. v. Gray, 12 App. D. C. 276 (1898).

[1] B. & M. R. R. v. Hooker, decided by the United States Supreme Court, April 6, 1914.

[2] 226 U. S. 491 (1912).

"Baggage liability is limited to personal baggage not to exceed one hundred dollars in value for a passenger presenting a full ticket and fifty dollars in value for a half ticket, unless a greater value is declared and stipulated by the owner and excess charges thereon paid at time of checking the baggage."

The court held that one hundred dollars was the limit of the liability of the defendant; that the effect of the filing gives the regulation as to baggage the force of a contract; that it was such a regulation as was contemplated and included in the Interstate Commerce Act, and being such, and being properly filed and posted, the plaintiff was bound thereby regardless of her knowledge of or assent to it.

The question as to whether a common carrier could in any way limit its common law liability and, if so, to what extent, has been the subject of much controversy and many diverse opinions in the courts of this country. The first rule, and one that never seemed to be questioned was that a common carrier might, by a just and reasonable contract, relieve itself of its common law liability as an insurer. This rule was universally recognized. But the rule was equally well settled and almost as universally maintained, that the carrier could not contract to relieve itself from liability for loss or damage which was the result of its own negligence or the negligence of its servants. There were but three jurisdictions which did not accept this rule.

In Illinois and Wisconsin the doctrine seemed to be that carriers could, by special contract, limit their liabilities, even where the loss or injury resulted from their own negligence, except where such negligence was gross.[3] In New York, the carrier could limit its liability for any degree of negligence on its part, even gross negligence, provided the contract expressly provided for such exemption or limitation, and was founded on valuable consideration.[4] Iowa, Kansas, Missouri and Texas, by statute, and Nebraska and Kentucky, by their constitutions, prohibited contracts limiting the liability of a carrier.

At this point in the development of the law, a tendency made its appearance to allow the carrier to limit its liability to a certain value agreed upon between the shipper and the carrier, with certain qualifications. This tendency was first recognized and applied in the leading case of *Hart* v. *P. R. R.*,[5] and has been followed ever

[3] Chicago, *etc.*, Ry Co. v. Davis, 159 Ill. 53 (1895); Wabash R. R. v. Brown, 152 Ill. 484 (1894); M. D. T. Co. v. Thielbar, 86 Ill. 71 (1877); Black v. Goodrich Co., 55 Wis. 319 (1882); Lawson v. Chicago, *etc.*, R. Co., 54 Wis. 455 (1885); Abrams v. Milwaukee, *etc.*, R. Co., 87 Wis. 485 (1894).

[4] Nells v. N. Y. C. R. R., 24 N. Y. 181 (1862); Cragin v. N. Y. C. R. R., 51 N. Y. 61 (1872); Westcott v. Fargo, 61 N. Y. 542 (1875); Wilson v. N. Y. C. R. R., 97 N. Y. 87 (1884); Wynard v. Syracuse, *etc.*, R. R., 71 N. Y. 180 (1877).

[5] 112 U. S. 331 (1884). The doctrine expounded in this case was ex-

since in the federal courts and in most of the State courts. The Pennsylvania courts have consistently refused to follow the Hart Case,[6] and Nevada has not followed it.[7]

In *C. M. & St. P. R. R* v. *Solan*[8] and *P. R. R.* v. *Hughes*[9] it was held that the constitutional power of Congress to regulate interstate commerce comprehends power to regulate contracts between shipper and carrier of shipments in such commerce in regard to liability for loss or damage to articles carried, but that until Congress has legislated upon that subject, the liability of a carrier, although engaged in interstate commerce, for loss or damage to property carried, may be regulated by the law of the State. In 1906 Congress passed what is commonly known as the "Carmack Amendment"[10] amending the interstate Commerce Act. This amendment was interpreted quite generally by the State courts as not affecting State control over contracts limiting liability.[11] However, the effect of those decisions was entirely destroyed in so far as they apply to interstate shipments, by the United States Supreme Court in *Adams Express Co.* v. *Croninger*,[12] which decided that Congress, by the Carmack Amendment, had taken possession of the subject and superseded all State regulations with reference to it, and that the rule of the Hart Case is the rule to be applied in all courts.

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pressly approved and enlarged upon by the Interstate Commerce Commission in *In re* Released Rates, 13 I. C. C. Reports, 550 (1908).

[6] Hughes v. R. R., 202 Pa. 222 (1902); Grogan v. Adams Ex. Co., 114 Pa. 523 (1886).

[7] Zetler v. T. & G. R. R. Co., 129 Pac. Rep. 299 (Nev. 1913).

[8] 169 U. S. 133 (1897). In this case a statute prohibited limitation of liability.

[9] 191 U. S. 477 (1903). Here the court held a contract limiting liability to be invalid as against public policy.

[10] Act of June 29, 1906, 34 Stat. 584, c. 3591.

[11] Bernard v. Adams Ex. Co., 205 Mass. 254 (1910); Hooker v. B. & M., 209 Mass. 598 (1911) (reversed by U. S. Supreme Court, *supra*, note 1); Greenwald v. Barrett, 199 N. Y. 170 (1910); Carpenter v. U. S. Express Co., 120 Minn. 59 (1912); Travis v. Wells-Fargo, 79 N. J. L. 83 (1909); Fielder v. Adams Ex. Co., 69 W. Va. 138 (1911); Larsen v. Oregon Short Line, 38 Utah, 130 (1910); Wright v. Adams Ex. Co., 230 Pa. 635 (1911) (reversed in 229 U. S. 629, 1912). These cases, however, must be considered as overruled, in so far as they apply to interstate shipments, since the decisions in Adams Express Co. v. Croninger, *supra*, note 2, and B. & M. v. Hooker, *supra*, note 1.

[12] 226 U. S. 491 (1912). The decision in this case has been followed and applied to slightly varying facts in the following cases: Kansas City R. Co. v. Carl, 227 U. S. 657 (1912); C. B. & Q. v. Miller, 226 U. S. 513 (1912); C. St. P. M. & O. Ry. v. Latta, 226 U. S. 519 (1912); M. K. & T. v. Harriman, 227 U. S. 657 (1912); Wells, Fargo v. Neiman-Marcus Co., 227 U. S. 469 (1912); C. R. I. & P. v. Cramer, 232 U. S. 490 (1913); G. N. Ry. v. O'Connor, 232 U. S. 508 (1913).

[13] Ford v. C. R. I. & P., 143 N. W. Rep. 249 (Minn. 1913); Barstow v. N. Y., N. H. & H., 143 N. Y. S. 983 (N. Y. 1913).

After the decision in the Croninger Case and previous to the decision in the Hooker Case, two State courts,[13] at least, applied the rule of the Hart and Croninger Cases to the limitation of baggage liability. The decision in the Minnesota and New York cases, as well as the one in the Hooker Case, would seem to be the only logical result in view of the line of cases, interpreting the Interstate Commerce Act, decided during the last decade. It must be remembered that the decision in the Croninger Case did not necessarily decide anything as to baggage liability, but merely upheld the validity of a provision in a bill of lading limiting liability, and decided that federal rules rather than State rules govern the validity of such contracts. In the Hooker Case the question was not as to whether a contract limiting liability was valid, but rather as to whether the shipper was bound by a limitation of liability for baggage, regardless of his knowledge of or assent to it, merely by reason of the fact that such limitation was filed and posted as a part of the carrier's schedules for passenger traffic; or, in other words, whether the limitation, filed and posted as part of the schedules, became an essential part of the rate from which the carrier must not deviate, and of which the shipper was bound to take notice; thus giving the regulation the force of a contract determining baggage liability.

As has been stated the holding in the principal case seems to be the only logical one that could have been expected in view of the previous decisions of the United States Supreme Court in interpreting the Interstate Commerce Act. The cases up to and including the year 1910 have been very ably analyzed by Professor Henry Wolf Biklé in an article[14] in which the present decision is predicted.

In *Texas & Pacific Ry. Co.* v. *Mugg*[15] it was held that "Whatever may be the rate agreed upon, the carrier's lien on the goods is, by force of the act of Congress, for the amount fixed by the published schedule of rates and charges, and this lien can be discharged, and the consignee can become entitled to the goods, only by the payment, or tender of payment, of such amount." In *T. & P. Rwy.* v. *Abilene Cotton Oil Co.*[16] it was held that the rate, when made out and filed, is notice. The shipper must take notice of the rate applicable and actual want of knowledge is no excuse. Where the rates charged were duly filed with the Commission, according to the act, and had not been found to be unreasonable by the Inter-State Commerce Commission, no action could be maintained at the common law in a State court for unreasonable freight rates. A shipper seeking reparation predicated upon the unreasonableness of the established rate must primarily invoke redress through the Commission, which body alone is vested with power originally to enter-

[14] "The Jurisdiction of Certain Cases Arising Under the Interstate Commerce Act," 60 UNIVERSITY OF PENNSYLVANIA LAW REVIEW 1 (October, 1911).

[15] 202 U. S. 242 (1905).

[16] 204 U. S. 426 (1906).

tain proceedings for the alteration of an established schedule. When once a rate has been filed and published it is binding and the allegation of unreasonableness is not sufficient to give the courts any jurisdiction whatever. In *Poor Grain Co.* v. *C. B. & Q.*[17] Mr. Commissioner Harlan says, "When once lawfully published, a rate, so long as it remains uncanceled, is as fixed and unalterable, either by the shipper or by the carrier as if that particular rate had been established by a special act of Congress. When regularly published it is no longer the rate imposed by the carrier, but the rate imposed by the law."

So long as the Commission has kept within the powers conferred by the act, the findings of that body are not subject to be reviewed by the courts, nor are its orders open to attack in the courts.[18] The courts are limited to the question of the power of the Commission to make the order and cannot consider the wisdom or expediency of the order itself.[19]

In *Atlantic Coast Line* v. *Riverside Mill*[20] it was held that the Interstate Commerce Act makes the initial carrier liable for any loss, damage or injury to the property, not only for its own negligence but for that of any agency which it may use, notwithstanding provisions in the bill of lading to the contrary. Later it was held that legislation by Congress in regard to matters of interstate commerce need not be inhibitive, but need only occupy the field, in order to supersede State statutes and rules on the same subject.[21]

C. & A. R. R. v. *Kirby*[22] held that a contract for special service or higher responsibility must be set forth in the published tariffs and open to all; if not so done it is illegal discrimination and is invalid. From this it would seem to follow that no contract asserting fresh liability or limiting liability would be held good unless the terms are set forth in the published tariffs, and, further, that when a contract is published in the filed schedules, no court can consider or decide whether the contract is unreasonable or against public policy, but that this power is alone in the Interstate Commerce Commission, just as though the regulation were a rate, and that when the regulation is once in the filed and published schedules it is as binding in every particular to the same extent as a rate would be.

In *Adams Ex. Co.* v. *Croninger*[23] the court said, "The knowledge of the shipper that the rate was based upon the value is to be

[17] 12 I. C. C. Rep. 418, 422 (1907).

[18] So. Pac. Co. v. I. C. C., 219 U. S. 433 (1910).

[19] I. C. C. v. Ill. Cent. R. R., 215 U. S. 452 (1909); B. & O. v. Pitcairn Coal Co., 215 U. S. 481 (1909).

[20] 219 U. S. 186 (1910).

[21] Northern Pac. Ry. v. Washington, 222 U. S. 370 (1911); Southern Ry. v. Reid, 222 U. S. 424 (1911); Mondow v. R. R., 223 U. S. 1 (1911); Adams Ex. Co. v. Croninger, 226 U. S. 491 (1912).

[22] 225 U. S. 155 (1911).

[23] 226 U. S. 491, 509 (1912).

presumed from the terms of the bill of lading and of the published schedules filed with the Commission." And in *M. K. & T. R. R.* v. *Harriman*[24] it was said that the shipper was compelled to take notice of the rate sheets contained in tariff schedules, "not only because referred to in the contract signed by them, but because they had been lawfully filed and published." In *C. R. I & P.* v. *Cremer*[25] the court said, "The provisions of the tariff enter into and form a part of the contract of shipment."

Hence we see that in the Abilene Oil Case a rate, when duly filed, is valid and binding and is notice to the shipper; in the Kirby Case we see that a contract, to be valid, must be set forth in the tariffs and duly filed; in the Croninger Case the knowledge of the shipper of the filed schedules is presumed; in the Harriman Case the shipper was compelled to take notice of the rate sheets in the tariff because they had been lawfully filed; in the Cramer Case we see that the provisions of the tariff form a part of the contract of shipment, and now finally in the Hooker Case the court has said that regulations incorporated in the tariff and properly filed are of as binding effect and as little open to adjudication by the courts as are the rates themselves.

C. McA. S.

LIBEL—CHARGE OF ILLEGITIMACY IN A WILL—LIABILITY OF EXECUTOR FOR PUBLICATION BY PROBATE—The Supreme Court of Tennessee has recently, in the case of *Harris* v. *Nashville Trust Company*,[1] adjudicated a case of first impression and, incidentally, has furnished one more instance in vindication of the staunch claim[2] of malleability and competency of common law jurisprudence and procedure to adjust itself to new forms of action as necessity shall require.

Plaintiff, a niece of the testator, had been involved in some litigation against the latter in regard to certain family estates under his administration. When the will was probated the following provision appeared, "And this sum of $250 to J. W., $1.00 to W. W., and $1.00 to Cleo W., *the illegitimate children of my brother James W.*, is all that they are ever to have of my estate." Cleo W. Harris, one of those designated in the above provision, brought an action for damages against the executor to recover damages on account of the libel against her contained in the testator's will *and published by*

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[24] 227 U. S. 657, 669 (1912). See also K. C. S. Ry. v. Carl, 227 U. S. 639 (1912), and Wells, Fargo & Co. v. Neiman-Marcus Co., 227 U. S. 469 (1912).

[25] 232 U. S. 490 (1913). See also Great Northern Ry. Co. v. O'Connor, 232 U. S. 508 (1913).

[1] 162 S. W. Rep. 584 (1914).

[2] Jacob v. State, 3 Humph. 493 (Tenn. 1842); Kujek v. Goldman, 150 N. Y. 176, 44 N. E. Rep. 773 (1896); Rice v. Coolidge, 121 Mass. 393 (1876).